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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,325	03/09/2004	Cary E. Gloodt	12810-44927	2098

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EXAMINER

BANKHEAD, GENE LOUIS

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,325

Applicant(s)

GLOODT, CARY E.

Examiner

Gene L. Bankhead

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☒ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/24/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Suggestions

Claim 9, line 9, recites the limitation "the pressure balanced valve". There is no antecedent basis for this limitation. As understood, the thermostatic mixing valve is the pressure balanced valve. Therefore the recitation should be changed to either --a pressure balanced thermostatic mixing valve-- or just --a pressure balanced valve-- or --the thermostatic mixing valve--.

Claim Objections

Claims 1-24 are objected to because of the following informalities:

The recitation of "between"(claim 1 lines 12-13, claim 2 lines 3-4, claim 5 lines 7-8, and claim 12 lines 7-8) is believed to be -- to --.

The recitation of "the fill spout and sprayer" (claim 1, line 1) is presumed to be --a fill spout and sprayer--.

Claim 8 recites the limitation "the hand held shower sprayer". Claim 5, from which claim 8 depends, makes no mention of a hand held shower sprayer. Claim 8 is believed to be dependent upon claim 6, not claim 5, and so has been treated. Appropriate correction is required.

Claim 9 recites the limitation "the pressure balanced valve", in line 9, however makes no previous mention to a pressure balanced valve in the claim. It is believed "the pressure balanced valve" is meant to read --the pressure balanced thermostatic mixing valve-- and so has been treated. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,5,12-13,15,17, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Weingarten (US 2296128).

With regard to claims 1,12-13,15,17, and 22 Weingarten teaches a bathtub deck 70, primary hot and cold water supply pipes 61 and 60 fluidically connected to their respective hot and cold water control valves 63 and 62 mounted to the bathtub deck. Weingarten further teaches a spout 68 fluidically connected to the hot and cold water control valves via pipes 64 and 63. Weingarten further teaches a thermostatic tempering valve 71 fluidically connected to the hot water supply pipe and spout that outputs water at a temperature below a predetermined maximum value (page 2 lines 9-25).

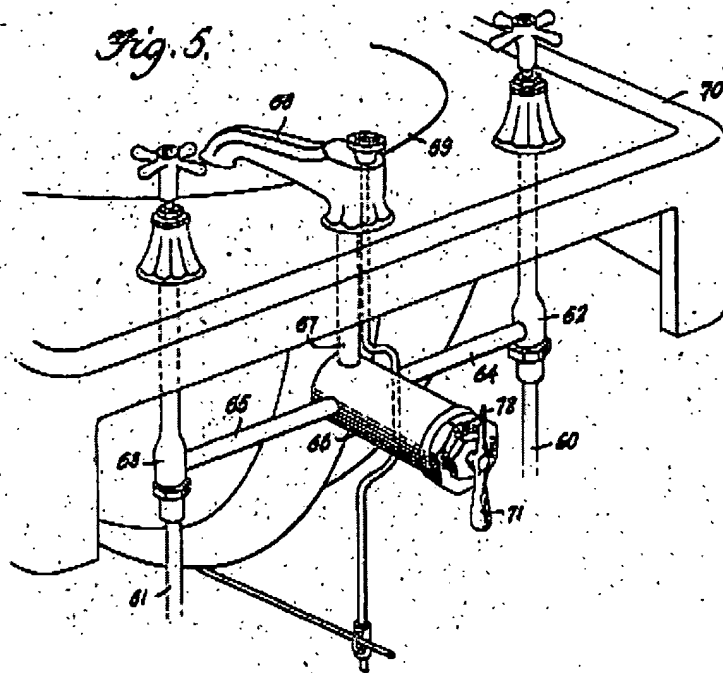


Figure 5: Weingarten (US 2296128)

With regard to claim 5, Weingarten teaches a bathtub deck 70, a fill member 68 fluidically connected to the hot and cold water control valves via pipes 64 and 63, and a hot and cold water supply 61 and 60 connected to their respective hot and cold water control valves 63 and the fill member. Weingarten further teaches an anti-scald valve 71 hydraulically connected to the hot water supply pipe via pipe 64.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,4,9,11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weingarten in view of Fraser (US 3105519).

Regarding claims 2 and 4, Weingarten teaches a thermostatic tempering valve comprising a mixing chamber (see Figure 2), adapted to intermix hot and cold water (column 3 lines 25-35). He further teaches the thermostatic tempering valve is connected to the cold water supply and spout, and that the thermostatic valve supplies water to the spout. However, Weingarten fails to explicitly teach the thermostatic tempering valve 71 is pressure balanced. Fraser teaches a pressure balanced mixing valve 19 for use in shower bath installations (column 1 lines 12-22). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the pressure balanced mixing valve of Fraser into the bathtub of Weingarten to advantageously maintain a constant water temperature in the event pressure fluctuations occur while taking a shower. Pressure fluctuations due to activities such as flushing the toilet can lead to a sudden drop or increase in shower water temperature and can lead to scalding due to hot water, or other injuries due to excessive cold water.

Regarding claims 9 and 11 Weingarten in view of Fraser teaches a bathtub capable of performing the method of claim 9 as recited. Weingarten teaches a thermostatic mixing valve 71 with an output 67 and plurality of inputs 65 and 64 fluidically connected to a freestanding bathtub faucet 68. He further teaches a hot and cold water supply, 64 and 63 respectively, fluidically connected to the thermostatic mixing valve via pipes 64 and 63. He further teaches the mixing valve is capable of

outputting water at a temperature below a predetermined maximum value (column 4 lines 9-25). Weingarten fails to explicitly teach the thermostatic tempering valve 71 is pressure balanced. Fraser teaches a pressure balanced mixing valve for use in shower bath installations (column 1 lines 12-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the pressure balanced mixing valve of Fraser into the bathtub of Weingarten to advantageously maintain a constant water temperature in the event pressure fluctuations occur while taking a shower; as flushing the toilet can lead to a sudden drop or increase in shower water temperature and can lead to scalding due to hot water, or other injuries due to excessive cold water.

In regard to claim 16, Weingarten teaches all limitations of claim 15 as previously stated. Weingarten teaches a thermostatic mixing valve 71 with an output 67 and plurality of inputs 65 and 64 fluidically connected to a freestanding bathtub faucet 68. He further teaches a hot and cold water supply, 64 and 63 respectively, fluidically connected to the thermostatic mixing valve via pipes 64 and 63. He further teaches the mixing valve is capable of outputting water at a temperature below a predetermined maximum value (column 4 lines 9-25). Weingarten fails to explicitly teach the thermostatic tempering valve 71 is pressure balanced. Fraser teaches a pressure balanced mixing valve for use in shower bath installations (column 1 lines 12-15). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the pressure balanced mixing valve of Fraser into the bathtub of Weingarten to advantageously maintain a constant water temperature in the event pressure fluctuations occur while taking a shower; as flushing the toilet can lead to a sudden drop

or increase in shower water temperature and can lead to scalding due to hot water, or other injuries due to excessive cold water.

Claim 3,6-8,10,14,19-21,23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weingarten in view of Sandham (US 917157).

Regarding claims 3, 6,8, and 10 Weingarten teaches all limitations of claim 1 and 9 as previously stated. However, he fails to teach a hand held shower sprayer with a flexible hose fluidically attached to a hot and cold water supply. Sandham teaches a bathtub with a hand held sprayer 20, capable of being used as a showerhead, and flexible hose 20 connected to a hot and cold water supply 12 and 11. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the spraying attachment of Sandham into the bathtub of Weingarten to advantageously allow for the showering of an infant or pet, whom cannot handle the high water speed and pressure of an overhead shower attachment. He further teaches an actuation valve 13 for the spraying attachment (column 2 lines 89-95).

With regard to claim 14, Weingarten teaches all limitations of claim 12 as previously stated. However, he fails to teach a fill member that is a sprayer. Sandham teaches a bathtub with a hand held sprayer 20 connected to a hot and cold water supply 12 and 11. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the spraying attachment of Sandham into the bathtub of Weingarten to advantageously allow for the showering of an infant or pet, whom cannot handle the high water speed and pressure of an overhead shower attachment. He

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further teaches an actuation valve 13 for the spraying attachment (column 2 lines 89-95).

In regards to claim 19-21, Weingarten teaches all limitations of claim 12, however does not teach a diverter valve. Sandham does not explicitly teach a diverter, however one of ordinary skill in the art would have known to connect a diverter is between the hot and cold water supply and the hand held shower sprayer sections as Sandham teaches water may enter the tub, be discharged through spraying disks, or through the flexible hose from the hot and cold water supply via the control valve 13 (column 2 lines 89-95). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the diverter of Sandham into the bathtub of Weingarten to enable water to be diverted from a single hot and cold water supply to the spout, hand held shower sprayer or additional attachments via only one valve, instead of having to use a separate valve for each attachment.

With regard to claim 23, Weingarten teaches all limitations of claim 22 and further teaches a bathtub configuration with secondary hot and cold water control valves 16 and 17 with the anti-scald valve connected to them, see Figure 1.

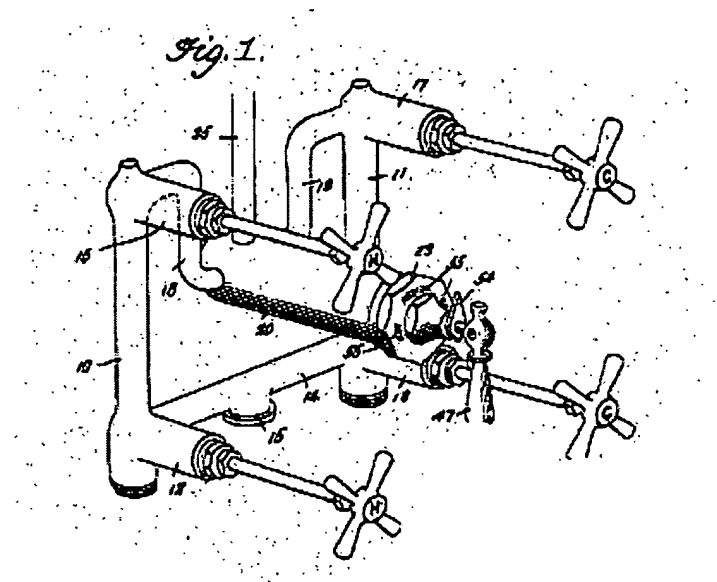


Figure 1: Weingarten (US 2296128)

However, he fails to teach a hand held shower sprayer with a flexible hose fluidically attached to a hot and cold water supply. Sandham teaches a bathtub with a hand held sprayer 20, capable of being used as a showerhead, and flexible hose 20 connected to a hot and cold water supply 12 and 11. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the spraying attachment of Sandham into the bathtub of Weingarten to advantageously allow for the showering of an infant or pet, whom cannot handle the high water speed and pressure of an overhead shower attachment

With regard to claim 24, Weingarten teaches a bathtub deck 70, primary hot and cold water supply pipes 61 and 60 fluidically connected to their respective hot and cold water control valves 63 and 62 mounted to the bathtub deck. Weingarten further teaches a spout 68 fluidically connected to the hot and cold water control valves via pipes 64 and 63. Weingarten further teaches a thermostatic tempering valve 71

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fluidically connected to the hot water supply pipe and spout that outputs water at a temperature below a predetermined maximum value (column 4 lines 9-25). Weingarten fails to teach the thermostatic mixing valve mounted to the bathtub deck with a handle member extending through the deck. It would have been obvious to one of ordinary skill in the art at the time of the invention to mount a mixing valve to the deck with its handle extended through the deck to enable one to adjust the thermostatic mixing valve without having to get out of the bathtub to reach the handle on the side of the tub. Weingarten further fails to teach a diverter valve. Sandham does not explicitly teach a diverter, however one of ordinary skill in the art would have known to connect a diverter is between the hot and cold water supply and the hand held shower sprayer as Sandham teaches water may enter the tub, be discharged through spraying disks, or through the flexible hose from the hot and cold water supply (column 2 lines 89-95). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the diverter of Sandham into the bathtub of Weingarten to enable water to be diverted from a single hot and cold water supply to the spout, hand held shower sprayer or additional attachments via only one valve, instead of having to use a separate valve for each attachment.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weingarten.

Regarding claim 18, Weingarten teaches all limitations of claim 17, however he fails to teach the thermostatic mixing valve mounted to the bathtub deck with a handle member extending through the deck. It would have been obvious to one of ordinary skill

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in the art at the time of the invention to mount a mixing valve to the deck with its handle extended through the deck to enable one to adjust the thermostatic mixing valve while in the tub instead of having to get out of the bathtub to reach the handle on the side of the tub.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene L. Bankhead whose telephone number is (571)-272-8963. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571)-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1100.


CHERYL TYLER
SUPERVISORY PATENT EXAMINER

Examiner
Art Unit 3744
GB